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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ASKLEPIOS HEALTH LLC, a Washington
limited liability company; MERIDIAN PARK
RADIATION ONCOLOGY CENTER, INC.,
an Oregon corporation; and IVAN PAVLOV,
an individual,

Plaintiffs,

v.

RADIATION ONCOLOGY SPECIALISTS,
PC, an Oregon professional corporation;
NORMAN WILLIS MD, an individual;
ROBERT MILLER, an individual; TANA
MILLER, an individual; and MARTIN FUSS
MD, an individual.

Defendants.

Case No. 3:18-CV-1177-PK

**DEFENDANT FUSS’
AMENDED
MOTION TO DISMISS**

**ORAL ARGUMENT
REQUESTED**

**EXPEDITED HEARING
REQUESTED**

LR 7-1 Certification

Pursuant to LR 7-1(a), counsel for the parties have conferred regarding all the subjects of
this motion but the parties could not resolve the dispute.

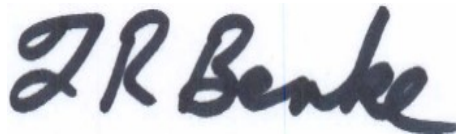
Counsel for the parties conferred regarding Defendant Fuss’ request for an expedited
hearing. Counsel for Plaintiffs does not oppose the request.

1 **MOTION**

2 Defendant Martin Fuss M.D. moves for an order dismissing plaintiffs' claims (Counts I
3 and II of plaintiffs' Third Amended Complaint) under Fed. R. Civ. P. 12(b)(1) for lack of subject
4 matter jurisdiction and failure to state a claim. This motion is supported by defendant Fuss'
5 Memorandum of Law in Support of Motion to Dismiss and Thomas Benke's Declaration in
6 Support of Motion to Dismiss.

7 Defendant Fuss requests an expedited hearing in order to avoid unfair prejudice to his
8 rights as adjudicated in arbitration May 11, 2018. The arbitrator decided that Fuss is entitled to a
9 20% share of Plaintiff Asklepios Health LLC but deferred a final ruling pending a decision on
10 the affirmative defense of illegality, which will be made in part on facts adduced at the
11 arbitration hearing March 5-20, 2018, nearly five months ago. There is no hearing transcript.
12 The arbitrator must therefore rely substantially on his notes and memory of witness testimony to
13 decide the issue of illegality. An expeditious decision on Fuss' motion to dismiss is therefore
14 needed to ensure that the matter is returned to the arbitrator, where it belongs, as soon as
15 possible.

16 Dated: September 10, 2018

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20 THOMAS R. BENKE, OSB 922251

21 503-246-1514, Attorney for Defendant Fuss
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MOTION TO DISMISS
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CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, I served a true and correct copy of the foregoing Defendant Fuss' AMENDED MOTION TO DISMISS to:

Bruce F. Howell
Schwabe Williamson and Wyatt, P.C.
1211 SW 5th Ave, Suite 1900
Portland, OR 97204

Anne Foster
Dunn Carney LLP
851 SW 6th Ave Ste 1500
Portland, OR 97204



s/ Thomas R. Benke

- ✓ by first class mail, postage prepaid
- ✓ by electronic transmission
- ✓ by the federal judiciary's CM/ECF filing system

THOMAS R. BENKE
OSB 922251
503-246-1514
Attorney for Defendant Fuss

DATED: September 10, 2018